

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

EnergyOnline, Inc.

Docket Nos. ER96-138-010
EL05-111-002

ORDER DENYING REQUEST FOR REHEARING AND DISMISSING UPDATED
MARKET POWER ANALYSIS

(Issued February 28, 2006)

1. In this order, we deny the rehearing request of EnergyOnline, Inc. (EnergyOnline) filed in response to the Commission's November 3, 2005 Order revoking EnergyOnline's authority to make sales at market-based rates.¹ We also dismiss EnergyOnline's updated market power analysis filed with its request for rehearing.

Background

2. In an order issued on May 31, 2005, the Commission announced its policy with respect to entities that failed to comply with the conditions under which the Commission granted them market-based rate authority, namely, the requirement to submit an updated market power analysis.² The Commission directed the captioned market-based rate sellers, including EnergyOnline, to file their updated market analyses within 60 days from the date of issuance of that order or provide satisfactory support for why they should not be required to do so. If an entity failed to file an updated market power analysis or provide satisfactory support for why it should not be required to do so within 60 days, its market-based rate authority would be revoked.

3. In the November 3 Order, the Commission revoked the market-based rate authority of the companies that failed to comply with the May 31 Order and terminated

¹ *3E Technologies, Inc.*, 113 FERC ¶ 61,124 (2005) (November 3 Order).

² *3E Technologies, Inc.*, 111 FERC ¶ 61,295 (2005) (May 31 Order). The May 31 Order established a refund effective date of 60 days after publication of notice of the investigation in the *Federal Register*. The notice was published in the *Federal Register* on June 10, 2005, with a refund effective date of August 9, 2005.

their market-based rate tariffs. Because EnergyOnline made no filing in response to the May 31 Order, EnergyOnline's market-based rate authority was revoked and its market-based rate tariff was terminated effective November 3, 2005.

4. On November 29, 2005, EnergyOnline filed a request for rehearing of the November 3 Order. EnergyOnline also asks the Commission to accept the updated market power analysis that it filed with its rehearing request. EnergyOnline acknowledges that it failed to submit an updated market power analysis as required by the terms of its market-based rate authorization and the May 31 Order. EnergyOnline requests that the Commission permit EnergyOnline to retain its market-based rate authority based on the following mitigating factors.

5. First, EnergyOnline notes that it has no power marketing activities to date. Second, it states that its failure to file an updated market power analysis was the result of an inadvertent administrative oversight and not the result of any malicious intent. It states that it devotes limited time and resources to power marketing operations. Further, EnergyOnline notes that the order granting its application for market-based rate authority does not explicitly require EnergyOnline to submit an updated market power analysis every three years and that it did not become aware of its obligation to file an updated market power analysis until after the Commission's November 3 Order was issued. EnergyOnline states that it has made a good faith effort to comply with other Commission requirements applicable to wholesale sellers and has diligently filed its Electric Quarterly Reports.

Discussion

6. As the Commission stated in the May 31 Order, in the absence of an updated market power analysis, the Commission cannot exercise its statutory duty to ensure that market-based rates are just and reasonable and that market-based rate sellers continue to lack the potential to exercise market power so that market forces are in fact determining the price. The Commission directed EnergyOnline to submit an updated market power analysis in the May 31 Order in order to execute this statutory duty.³ In the November 3 Order, we revoked EnergyOnline's market-based rate authority in light of EnergyOnline's failure to comply with the May 31 Order.

7. The arguments set forth in EnergyOnline's request for rehearing of the November 3 Order are not sufficient to justify granting rehearing. The fact that EnergyOnline has never sold power under its market-based rate authority, or that it did

³ Although EnergyOnline states that the order granting it market-based rate authority did not explicitly require it to file updated market power analyses every three years, any ambiguity in that regard was remedied by the May 31 Order.

not have actual knowledge of the May 31 Order, does not relieve EnergyOnline of its responsibility to file an updated market power analysis, as directed by the May 31 Order.⁴ We will therefore deny EnergyOnline's request for rehearing.

8. The revocation of EnergyOnline's market-based rate authority is without prejudice to EnergyOnline making a new filing with the Commission under section 205 of the Federal Power Act to request market-based rate authority.⁵

9. Because EnergyOnline's market-based rate authorization was revoked and its market-based rate tariff terminated effective November 3, 2005, EnergyOnline's updated market power analysis filed with its request for rehearing is moot and we dismiss it as such.⁶

⁴ Rule 2010(k) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010(k) (2005), requires that any entity regulated by the Commission provide a person to receive service of documents pertaining to that entity. Rule 2010(k)(2) states that "[e]ach regulated entity has a continuing obligation to file with the Commission updated information concerning the corporate official or person designated to receive service." In addition, the Commission published notice of the May 31 Order in the *Federal Register* on June 10, 2005, 70 Fed. Reg. 33,888-89 (2005). See 18 C.F.R. § 385.2009 (2005). See also 44 U.S.C. § 1507 (2000) (Publication of an order in the *Federal Register* "is sufficient to give notice of the contents of the document to a person subject to or affected by it."); *Yakus v. United States*, 321 U.S. 414, 435 (1944) (citing 44 U.S.C. § 307, now codified as 44 U.S.C. § 1507).

⁵ 16 U.S.C. § 824d (2000).

⁶ We also note that the Commission requires that compliance filings and other types of pleadings be submitted separately from requests for rehearing. Parties are not permitted to bundle different types of filing into a single pleading. See, e.g., *North Hartland, LLC*, 105 FERC ¶ 61,192 at P 21 (2003) (a request for interconnection may not be submitted with a rehearing request). Thus, even if EnergyOnline's updated market power analysis were not moot, we would reject it on this alternative basis.

The Commission orders:

(A) EnergyOnline's request for rehearing is hereby denied, as discussed in the body of this order.

(B) EnergyOnline's updated market power analysis is dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.